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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3898

11 **MICHAEL FRANCIS CRUZ**
12 **242 Woodridge Drive**
13 **Vallejo, CA 94591**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 93333**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about September 5, 2009, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 93333 to Michael Francis Cruz (Respondent). The License was in full force
23 and effect at all times relevant herein and will expire on January 31, 2013, unless renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code (Code) unless otherwise indicated.

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.]. Section 4300(a) of the Code provides that every
4 license issued by the Board may be suspended or revoked.

5 5. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
9 renewed within three years following its expiration may not be renewed, restored, or reinstated
10 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
11 the Code provides that any other license issued by the Board may be canceled by the Board if not
12 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
13 reissued but will instead require a new application to seek reissuance.

14 STATUTORY AND REGULATORY PROVISIONS

15 6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
16 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
17 not be limited to, any of the following:

18 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
19 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
20 whether the act is a felony or misdemeanor or not.

21 (j) The violation of any of the statutes of this state, of any other state, or of the United
22 States regulating controlled substances and dangerous drugs.

23 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
24 of a licensee under this chapter.

25 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency.

1 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of the license.

4 8. California Code of Regulations, title 16, section 1770, states:

5 “For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by her license or registration in a
10 manner consistent with the public health, safety, or welfare.”

11 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
14 controlled substance, except that furnished upon a valid prescription/drug order.

15 11. Health and Safety Code section 11158 provides, in pertinent part, that no controlled
16 substance classified in Schedules II-V shall be dispensed without a valid prescription.

17 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
18 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
19 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
20 or subterfuge; or (2) by the concealment of a material fact.

21 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
22 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
23 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

24 COST RECOVERY

25 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 a. An investigation of controlled substance/dangerous drug inventory and stock on
2 hand by CVS auditors/investigators determined that between in or around April 2009 and March
3 2010 the CVS Pharmacy by which Respondent was employed was short anywhere between 86.9
4 and 88 pints of **Phenergan/Promethazine with Codeine** (stock bottle contains one pint).

5 b. On or about March 18, 2010 and March 19, 2010, Respondent was captured on
6 store surveillance (videocamera) placing 5 or 6 pint bottles of **Phenergan/Promethazine with**
7 **Codeine** on each occasion (a total of 10-12 pint bottles) into plastic bags, and handing those bags
8 to the driver or passenger in an automobile at the pharmacy drive-through window. On neither
9 occasion did Respondent receive or process a prescription for the medication(s).

10 c. Respondent subsequently admitted to having similarly dispensed/furnished pint
11 bottles of **Phenergan/Promethazine with Codeine**, without prescription, on several occasions.
12 He admitted to having dispensed/furnished at least twenty (20) pints in this fashion.

13 d. Respondent further admitted that in connection with his criminal case (see
14 below) he paid restitution to CVS in an amount equal to 88 pints of **Promethazine with Codeine**.

15
16 FIRST CAUSE FOR DISCIPLINE

17 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

18 21. Respondent is subject to discipline under section 4301(f) of the Code in that
19 Respondent, as described in paragraphs 18 to 20 above, committed numerous acts involving
20 moral turpitude, dishonesty, fraud, deceit, or corruption.

21
22 SECOND CAUSE FOR DISCIPLINE

23 (Furnishing of Controlled Substance)

24 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
25 4059 of the Code, and/or Health and Safety Code section 11158, in that Respondent, as described
26 in paragraphs 18 to 20 above, furnished/dispensed without a valid prescription, and/or conspired
27 to furnish/dispense, and/or assisted or abetted furnishing/dispensing of, a controlled substance.

1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraphs 18 to 20 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7
8 FOURTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

10 24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
12 18 to 20 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

14
15 FIFTH CAUSE FOR DISCIPLINE

16 (Conviction of Substantially Related Crime(s))

17 25. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
18 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
19 a substantially related crime, in that on or about July 15, 2010, in the criminal case *People v.*
20 *Michael Francis Cruz*, Case No. VCR207210 in Solano County Superior Court, Respondent was
21 convicted of violating Health and Safety Code section 11153, subdivision (a) (Unlawful
22 Controlled Substance Prescription), a misdemeanor. The conviction was entered as follows:

23 a. On or about July 15, 2010, based on the conduct described in paragraphs 18 to
24 20, Respondent was charged by Amended Felony Complaint in Case No. VCR207210 under (1)
25 Penal Code section 487(a) (Grand Theft by Embezzlement), a felony, and (2) Health and Safety
26 Code section 11153(a) (Unlawful Controlled Substance Prescription), a felony.

27 b. On or about July 15, 2010, Count 2 was amended from felony to misdemeanor.
28 Respondent pleaded *nolo contendere* and was found guilty. Count 1 was dismissed.

1 c. On or about July 15, 2010, the Court noted that Respondent had paid restitution
2 in full. Imposition of sentence was suspended in favor of a period of court probation of three (3)
3 years, on terms and conditions including time served (1 day), and search conditions.
4

5 SIXTH CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct)

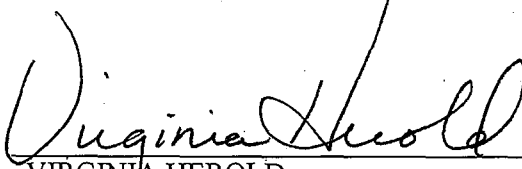
7 26. Respondent is subject to discipline under section 4301 of the Code in that
8 Respondent, as described in paragraphs 18 to 25 above, engaged in unprofessional conduct.
9

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Pharmacy issue a decision:

- 13 1. Revoking or suspending Pharmacist Technician License Number TCH 93333, issued
14 to Michael Francis Cruz (Respondent);
15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
17 3. Taking such other and further action as is deemed necessary and proper.
18

19 DATED: 4/5/11


20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant
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